IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

OP.No. 31952 of 1999(D)

PETITIONER:

M. SALIM,
ABIDA MANZIL,
KONNAMONKARA,
ADOOR.P.O.,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.S.A.RAZZACK.

RESPONDENTS:
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1. **THE ASSISTANT EXECUTIVE ENGINEER,**
   KERALA STATE ELECTRICITY BOARD,
   ELECTRICAL MAJOR SECTION,
   ADOOR, PATHANAMTHITTA DISTRICT.

2. **THE EXECUTIVE ENGINEER,**
   KERALA STATE ELECTRICITY BOARD,
   DIVISIONAL OFFICE,
   ADOOR, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 54352/1999 IN O.P. NO. 31952/1999

DISMISSED

16/11/2007. **SD/- KURIAN JOSEPH, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SPECIAL BILL DTD. 08/03/96 ISSUED BY THE R.1.

EXT.P.2: COPY OF THE INTERIM ORDER DT. 18/07/1998 IN I.A. NO. 1168/98 IN O.S. NO. 133/96 OF THE MUNSIFF'S COURT, ADOOR.

EXT.P.3: COPY OF THE PETITIONER'S APPLICATION DTD. 20/10/1998 FOR ARBITRATION SUBMITTED TO THE R.2.

EXT.P.3.A: COPY OF THE POSTAL ACKNOWLEDGEMENT DT. 23/10/98.

EXT.P.4: COPY OF THE DEMAND NOTICE NO. BB.99-2000 DTD. 06/12/1999 ISSUED BY THE R.1.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

KURIAN JOSEPH, J.

O.P. NO. 31952 OF 1999

Dated this the 16th day of November, 2007.

J U D G M E N T

The original petition is filed with the following prayers :-

i) Issue a writ of certiorari or other appropriate writ, direction or order calling for the records leading to Exhibits P1 and P4 demand notes and quashing the same.

ii) Issue a writ of mandamus or other appropriate writ, direction or order directing the respondents to make the reference applied for in Exhibit P3 and to abstain from enforcing Exhibits P1 and P4 demands without such arbitration.

iii) Declare that the respondents have no authority of law to impose or demand the alleged liability in Exhibit P1 without providing the petitioner the details of such claim and an opportunity to explain.

iv) Issue a writ of mandamus or other appropriate writ, direction or order directing the 1st respondent to re-connect the power supply which was disconnected for non-payment of Exhibit P1 demand at the licensee's cost.

As far as penalty for unauthorised connected load is concerned, it is now settled law in view of the Bench decision of this Court in W.A.1231/03 that the penalty has to be limited to the fixed charge portion. It is held that there shall not be any penalty by way of proportionate energy charges. The impugned demands

are quashed making it clear that the liability of the petitioner shall only be for the penalty for fixed charge portion. The revised demand shall be issued to the petitioner and the amounts already remitted by the petitioner shall be adjusted.

This original petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

smp

KURIAN JOSEPH, J.

O.P. NO. 31952 OF 1999

J U D G M E N T

16.11.2007